



LICENSING COMMITTEE

SPECIAL MEETING

TO BE HELD IN CIVIC HALL, LEEDS ON

FRIDAY, 3RD SEPTEMBER, 2010 AT 11.30 AM

MEMBERSHIP

Councillors

S Armitage (Chair) - Cross Gates and Whinmoor;
M Dobson - Garforth and Swillington;
R Downes - Otley and Yeadon;
J Dunn - Ardsley and Robin Hood;
Mrs R Feldman - Alwoodley;
R D Feldman - Alwoodley;
T Grayshon - Morley South;
T Hanley - Bramley and Stanningley;
G Hussain - Roundhay;
G Hyde - Killingbeck and Seacroft;
V Morgan - Killingbeck and Seacroft;
B Selby - Killingbeck and Seacroft;
C Townsley - Horsforth;
D Wilson - Rothwell;
G Wilkinson - Wetherby;

Agenda compiled by:
Tel No:
Governance Services
Civic Hall
LEEDS LS1 1UR

Helen Gray
247 4355

A G E N D A

Item No	Ward/Equal Opportunities	Item Not Open		Page No
1			<p>APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS</p> <p>To consider any appeals in accordance with Procedure Rule 25 of the Access to Information Procedure Rules (in the event of an Appeal the press and public will be excluded)</p> <p>(*In accordance with Procedure Rule 25, written notice of an appeal must be received by the Chief Democratic Services Officer at least 24 hours before the meeting)</p>	
2			<p>EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC</p> <p>1 To highlight reports or appendices which officers have identified as containing exempt information, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report.</p> <p>2 To consider whether or not to accept the officers recommendation in respect of the above information.</p> <p>3 If so, to formally pass the following resolution:-</p> <p>RESOLVED – That the press and public be excluded from the meeting during consideration of those parts of the agenda designated as containing exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information</p>	

Item No	Ward/Equal Opportunities	Item Not Open		Page No
3			<p>DECLARATIONS OF INTEREST</p> <p>To declare any personal/prejudicial interests for the purpose of Section 81(3) of the Local Government Act 2000 and paragraphs 8 to 12 of the Members Code of Conduct</p>	
4			<p>APOLOGIES FOR ABSENCE</p>	
5	All Wards;		<p>CONSULTATION : REBALANCING THE LICENSING ACT</p> <p>To consider the report of the Assistant Chief Executive (Corporate Governance) setting out the measures proposed by the Government which are intended to rebalance the licensing regime under the Licensing Act 2003. The report also provides the Council's proposed response to the Home Office consultation</p> <p>(Report attached)</p>	1 - 28

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Report of the Assistant Chief Executive

Licensing Committee

Date: 3rd September 2010

Subject: Consultation: Rebalancing the Licensing Act

<p>Electoral Wards Affected:</p>	<p>Specific Implications For:</p> <p>Ethnic minorities <input type="checkbox"/></p> <p>Women <input type="checkbox"/></p> <p>Disabled people <input type="checkbox"/></p>
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Executive Summary

Since the introduction of the Licensing Act 2003 there has been growing concern that the original vision of a vibrant “café culture” has failed to materialize. The Government intends to introduce more flexibility into the current licensing regime to allow local authorities and the police to clamp down on alcohol-related crime and disorder hot spots within local night time economies. To rebalance the licensing regime the Government is proposing a number of measures.

This report describes these measures and provides the council’s response to the 6 week consultation issued by the Home Office on these measures.

1.0 Purpose Of This Report

- 1.1 The purpose of this report is to report to Licensing Committee the details of the Home Office consultation called “Rebalancing the Licensing Act - A consultation on empowering individuals, families and local communities to shape and determine local licensing.
- 1.2 Officers have prepared a response to the consultation and this report seeks approval from Licensing Committee to submit this response as Leeds City Council’s formal response to the consultation.

2.0 Background Information

- 2.1 The Conservative Party made a pre-election promise to review and overhaul the Licensing Act 2003.
- 2.2 In the Coalition Agreement, the Government set out a clear programme of reform around alcohol licensing to tackle the crime and anti-social behaviour that is too often associated with binge drinking in the night time economy. In particular, the Government set out five commitments which are covered in the consultation:
- We will overhaul the Licensing Act to give local authorities and the police much stronger powers to remove licences from, or refuse to grant licences to, any premises that are causing problems.
 - We will allow councils and the police to shut down permanently any shop or bar found to be persistently selling alcohol to children.
 - We will double the maximum fine for underage alcohol sales to £20,000.
 - We will permit local councils to charge more for late-night licences to pay for additional policing.
 - We will ban the sale of alcohol below cost price.
- 2.3 A sixth commitment to “review alcohol taxation and pricing to ensure it tackles binge drinking without unfairly penalising responsible drinkers, pubs and important local industries” is being taken forward separately by the Home Office and HM Treasury.
- 2.4 This consultation outlines the changes the Government would like to make now to introduce more flexibility into the current regime to allow local authorities and the police to clamp down on alcohol related crime and disorder hot spots within local night time economies.

3.0 Main Issues

- 3.1 To rebalance the licensing regime the Government is proposing the following measures:
- a. Give licensing authorities the power to refuse licence applications or call for a licence review without requiring relevant representations from a responsible authority.
 - b. Remove the need for licensing authorities to demonstrate their decisions on licences “are necessary” for (rather than of benefit to) the promotion of the licensing objectives.

- c. Reduce the evidential burden of proof required by licensing authorities in making decisions on licence applications and licence reviews.
- d. Increase the weight licensing authorities will have to give to relevant representations and objection notices from the police.
- e. Simplify Cumulative Impact Policies to allow licensing authorities to have more control over outlet density.
- f. Increase the opportunities for local residents or their representative groups to be involved in licensing decisions, without regard to their immediate proximity to premises.
- g. Enable more involvement of local health bodies in licensing decisions by designating health bodies as a responsible authority and seeking views on making health a licensing objective.
- h. Amend the process of appeal to avoid the costly practice of rehearing licensing decisions
- i. Enable licensing authorities to have flexibility in restricting or extending opening hours to reflect community concerns or preferences.
- j. Repeal the unpopular power to establish Alcohol Disorder Zones and allow licensing authorities to use a simple adjustment to the existing fee system to pay for any additional policing needed during late-night opening.
- k. Substantial overhaul of the system of Temporary Event Notices to give the police more time to object, enable all responsible authorities to object, increase the notification period and reduce the number that can be applied for by personal licence holders.
- l. Introduce tougher sentences for persistent underage sales.
- m. Trigger automatic licence reviews following persistent underage sales.
- n. Ban the sale of alcohol below cost price.
- o. Enable local authorities to increase licensing fees so that they are based on full cost recovery.
- p. Enable licensing authorities to revoke licenses due to no-payment of fees.
- q. Consult on the impact of Mandatory Licensing Conditions Order and whether the current conditions should be removed.

3.2 These measures have been described in more detail in the consultation document which can be found on the Home Office Website.

3.3 The Home Office has asked for responses to the consultation to be submitted to them by 8th September.

3.4 Officers have prepared a combined response from the licensing authority and internal stakeholders which can be found at Appendix 1. We understand that external stakeholders such as West Yorkshire Police will be commenting separately.

4.0 Implications For Council Policy And Governance

4.1 Should the changes proposed in the consultation document be adopted by the Government, the council will need to redraft and consult upon its Licensing Act 2003 Statement of Licensing Policy to take into consideration matters such as automatic hearings in the case of premises subject to a CIP, Late Night Levy, zoning etc.

4.2 The changes are expected to be included in the Police Reform and Social Responsibility Bill which is due to start its parliamentary journey in October 2010 and gain Royal Assent in November 2011. More minor changes may occur through secondary legislation and may be in place before then.

5.0 Legal And Resource Implications

5.1 This is a major overhaul to the Licensing Act which contains many elements. Raising fees so that they are provided on a cost recovery basis would require a budget review by the Section, including collating time recording information.

5.2 As the Policy would need to be reviewed, redrafted and consulted upon, there would be a cost and resource implication in 2011/12. The level of this would not be able to be determined until the scope of the changes is known.

5.3 Determining whether to adopt some of the discretionary provisions would require consultation with responsible authorities and possible public consultation.

6.0 Conclusions

6.1 Although an overhaul of the Licensing Act is welcome there are a number of proposals which will require careful implementation.

7.0 Recommendations

7.1 That members note the contents of the report and approve the content of the draft consultation response as the Council's formal response.

Appendix 1 – Draft Response to Rebalancing the Licensing Act.

PRO-FORMA FOR CONSULTATION RESPONSES

Alcohol plays an important part in the cultural life of this country, employing large numbers in production, retail and the hospitality industry. The industry as a whole contributes around £8.5bn to the Exchequer through excise duty alone, and over 200,000 premises have a licence to sell alcohol. Central to this needs to be a system of alcohol licensing that is effective in regulating sales and reflective of local demands. The consultation document sets out the Government's proposals for overhauling the current licensing regime to give more power to local authorities and the police to respond to local concerns about their night-time economy, whilst promoting responsible business.

Since the introduction of the Licensing Act there has been growing concern that the original vision of a vibrant "café culture" has failed to materialise. The Government intends to introduce more flexibility into the current licensing regime to allow local authorities and the police, to clamp down on alcohol-related crime and disorder hot spots within local night-time economies. To rebalance the licensing regime the Government is proposing a number of measures.

We would like to hear your views on the Coalition Government's commitments on alcohol policy, to ensure that these are taken into account when each measure is implemented.

The consultation document can be viewed in full at:
<http://www.homeoffice.gov.uk/about-us/consultations/>

Please download this document and save it to your computer, fill in your responses in the tick boxes and text boxes provided and then email it back to us by 8TH September at:
Alcohol.consultation@homeoffice.gsi.gov.uk

Alternatively, this document can be printed and returned by post to:

Home Office - Alcohol Strategy Unit,
4th Floor, Fry Building,
2 Marsham Street,
London,
SW1P 4DF

If you have any problems completing the form or need an accessible version, please contact Helen Brewis on 0207 035 0054 or at Helen.brewis@homeoffice.gsi.gov.uk.

The information you send us may be passed to colleagues within the Home Office, the Government or related agencies. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000, the Data Protection Act (DPA) 1998 and the Environmental Information Regulations 2004.

If you want other information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The following questions ask for some information about you. The purpose of these questions is to provide some context on your consultation responses and to enable us to assess the impact of the proposals on different groups of people. By providing this information you are giving your consent for us to process and use this information in accordance with the conditions set out above.

About you

What is your gender? (please tick one)

Female

Male

How old are you? (please tick one)

Under 18

18 – 24

25 – 34

35 – 54

Over 55

Where do you live? (please tick one)

North East

North West

South East

Yorkshire and the Humber

West Midlands

East Midlands

East of England

South West

London

Wales

Please tell us your occupation (if relevant)

Not relevant

Please tell us which organisation you represent (if relevant)

Leeds City Council

DRAFT

Giving more local powers to refuse and revoke licences

Currently under the provisions in the 2003 Licensing Act there is a fundamental presumption in favour of granting an application for a licence to sell alcohol, which makes it difficult for local authorities to turn down applications. The Government wants to overhaul the licensing system to empower local councils and the police to clamp down on binge drinking hotspots and irresponsible retailers in order to tackle alcohol-related violence and anti-social behaviour. They also want to give local residents and community groups a greater say in licensing decisions to ensure they reflect the wishes of the local community and to consider whether the licensing objectives need to be widened so that health issues can be taken into consideration when making licensing decisions.

Key proposals outlined in the consultation document to deliver these objectives and the relevant consultation questions are listed below. These proposals are outlined in chapter 5 of the consultation document. Relevant paragraphs in the consultation document are noted alongside the proposals below.

Proposal:

- Give licensing authorities the power to refuse licence applications or call for a licence review without requiring relevant representations from a responsible authority (Paragraph 5.03).

Consultation Question 1: What do you think the impact would be of making relevant licensing authorities responsible authorities?

Designating the licensing authority as a responsible authority would allow them to use their own information such as complaints from members of the public, ward members and residents groups, to inform decisions relating to premises licences, make representations and to bring reviews of premises licences. It may increase the number of hearings, especially if the Government removes the “necessity” requirement as well.

It would also allow the licensing authority to bring specific types of application to hearing without the need for agency or public representations e.g.. those which fall within a cumulative impact policy. The local authority would have to set a clear policy on which types of applications these are. Clear guidance relating to this would have to be given in the licensing authorities Statement of Licensing Policy so that applicants are prepared for a hearing because they fall within locally set parameters.

However, there is a concern that making the licensing authority a responsible authority would allow the other partner agencies to step back and expect the licensing authority to lead on all reviews and oppose new applications. Clear guidelines should be given in the S182 guidance which links the RAs with licensing objectives, so for example crime and disorder would be primarily dealt with by the police.

Proposals (Paragraph 5.04):

- Reduce the evidential burden of proof required by licensing authorities in making decisions on licence applications and licence reviews.
- Remove the need for licensing authorities to demonstrate their decisions on licences ‘are necessary’ for (rather than of benefit to) the promotion of the Licensing Act objectives.

Consultation Question 2: What impact do you think reducing the burden of proof on licensing authorities will have?

Every decision the Licensing Authority makes is informed by the evidence provided by responsible authorities and/or interested parties in their representations. This evidence ensures that the decisions made are legally robust and are less open to challenge by appeal to the Magistrates Court. This evidence must relate to the licensing objectives and provides the proof that the decision is necessary for the promotion of the licensing objectives.

As long as the decision is supported by evidence and is 'reasonable' within the terms of the Act it is not necessary for the evidence to be proved to any particular standard. In particular those making representations are not required to prove beyond reasonable doubt that the licensing objectives will be undermined as a result of the grant of the licence or application. What is not allowed is speculation about the impact without some evidential basis. In that sense it is misleading to talk about a burden of proof.

By amending the Act so that decisions must benefit the objectives rather than being necessary to promote them would allow greater flexibility for decision makers. However removing the requirement may lead to more speculative representations. It would increase the number and length of hearings, and removes one of the "checks and balances" the current system has which ensures a fair system which balances the needs of residents and the needs of business. It is also likely to lead to greater inconsistency in decision making and more appeals.

By allowing speculative representations, and without the need to ensure that the determination is 'necessary' to promote the licensing objectives means that licensing authorities would need to strengthen their policy to provide guidance to ensure that decisions are made in a consistent manner.

If the appeal process is changed (see question 10 and 11) it may increase the number of judicial review challenges particularly if decisions are given immediate effect as the decision can be stayed in JR proceedings pending a hearing.

Consultation Question 3: Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?

Yes

No

Maybe

Please outline any suggestions in the box below

The applicant is provided with the space on the application form to describe steps they plan to take to meet the four licensing objectives. This section is not mandatory, and can lead to applicants specifying steps that they are not able to comply with purely to impress the licensing authority or listing matters that cannot then be conditions. The spaces provided are small which leads to short sentences. The licensing authority relies on the responsible authorities to make representations if they decide the operating schedule is not sufficient.

Applicants are often unsure of how much detail they should go into in this section, and for some writing steps in this section is difficult and leads to an operating schedule that is difficult to understand and even more difficult to translate into enforceable conditions.

This concept of the operating schedule was seen as key to the operation of the new regime under the Act. The legislation actually suggests that the application and operating schedule are separate documents (see for example s17 (3) (a)) however many involved in the process (from both sides) were surprised at the relatively minimal nature of the schedule as part of the application form. Having a separate operating schedule would allow an approach which would be more of a risk assessment of the operation and would thus allow the application to assess the impact of his/her operation and propose conditions based upon that. Leeds City Council provides a proforma risk assessment to all applicants which provides a pool of steps that the applicant may choose to include in their operating schedule. These steps have been checked and approved by the responsible authorities. Please see [our Proforma Risk Assessment v4](#)

The Government may alternatively consider it more appropriate to provide a pool of carefully worded conditions that the applicant can use to create their own operating schedule appropriate to their business and the local area. This could be provided by the licensing authority or by Government through the S182 Guidance. This pool of conditions could guide the applicant through considerations such as the impact their application will have on the local area, and could be based on the licensing objectives.

Under the old regime it was possible for applicants to give undertakings to the magistrates in connection with their application. This has not been possible under the 2003 Act regime. For example an application may come to a hearing which includes live music. Local residents object as they are concerned that the premises will operate as a small concert venue. The applicant attends a hearing and indicates that he/she only intends to provide live duets on an occasional basis. The licensing authority is persuaded that this will not undermine the objectives and grants a licence for live music. However they (and the residents) are concerned that the operation may change or be sold and therefore there is a risk that the objectives might be undermined in the future. It is not necessary to refuse the licence and it is extremely complex to condition the licence to prevent this in any enforceable manner. If these undertakings as to style of operation could be recorded as part of the decision then that coupled with the ability of the Licensing Authority to seek a review would assist residents and the Councillors making decisions.

It has been made clear, through the S182 guidance, that licensing authorities should not have regard for the planning process when making determinations on licensing applications.

However, if the application was to be accompanied of a copy of the planning consent it would save the applicant in repeating many of the measures that have already been addressed and agreed via the planning process.

As planning already take the impact on the local area into account when making determination on planning applications, ensuring the licence application corresponds with existing/proposed planning consent saves duplication of effort. It also fosters a "one council" approach and provides consistency across the regulatory services. At present the extent to which the 'interests of the amenity' and 'public nuisance in planning and licensing respectively are the same concept is legally unclear. It is also unclear as to whether the issue of opening hours is primarily one for licensing or planning. We would respectfully suggest that as a minimum the position be clarified so that the issue of opening hours is a planning issue and that there is a rebuttable presumption that the hours should match.

Proposal:

- Increase the weight licensing authorities will have to give to relevant representations and objection notices from the police (Paragraph 5.05).

Consultation Question 4: What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?

The council already places considerable weight on the representations and notices provided by the police and case law suggests that if the police representations are rejected then cogent reasons should be given.

Licensing authorities and the police work closely together. Leeds City Council's licensing enforcement team work closely with the Police, both neighbourhood police and the local licensing team, and undertake joint inspections and other multi agency work. All responsible authorities are invited to attend monthly meetings to discuss problem premises and special consideration is given to those premises that are failing to meet the required standards and who may be subject to future review.

With this in mind, requiring licensing authorities to accept all representations, notices and recommendations from the police would not impact on the licensing authority in Leeds. Indeed we have never rejected a police representation before a hearing unless it is invalid e.g. outside the time scales allowed.

However there are occasions where the police agree conditions with an applicant and subsequently do not attend a hearing. Local residents may then attend and give information about the area which persuades a licensing committee to reject the application altogether or to modify and strengthen the agreed conditions. This ability must be maintained and the authority should not be bound by the police agreement.

Involving the community and their representatives

Proposal:

- Increase the opportunities for local residents or their representative groups to be involved in licensing decisions, without regard to their immediate proximity to premises (Paragraphs 5.07 and 5.08).

Consultation Question 5: How can licensing authorities encourage greater community and local resident involvement?

There is an entire network of community groups the council already engages with. In Leeds, Ward Members hold regular Area Committee meetings which are concerned entirely with local issues. In addition the Area Committees hold special meetings to discuss specific issues, so if there is an area which is particularly suffering with licensing issues, officers from the Licensing Authority can attend to listen to residents concerns and provide information and support. We can also engage the parish/town councils in any matter which affects their area.

However we are aware that this network of community engagement does not exist in all authority areas.

However for area committees, parish and town councils to fully engage with the licensing authority about licence applications, the 28 day notice period would have to be increased to take into account their regular meeting interval (normally 6 weeks or two-monthly).

Consultation Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?

Representations received by the licensing authority are given a preliminary check and a decision is made whether the representation is valid. The vicinity test is part of this checking process. As vicinity was not defined in the Act, and we are only guided by the S182 Guidance in that representation are considered in the vicinity if the person could be directly affected by the licensable activities, this leads to subjective decisions relating to whether or not a person resides in the vicinity.

If in any doubt, Leeds City Council accepts the representation and the application is sent to a hearing where the point can be argued. Since April 2009 out of 282 applications received, only four received invalid representations (out of time, not in vicinity, not relating to licensing objectives) and were not sent to hearing for other reasons.

In our experience removing the vicinity test would not increase licensing hearings, but would provide an outlet for people to object who might not be directly affected by the licence application.

Public Health

Proposal:

- o Enable more involvement of local health bodies in licensing decisions by designating health bodies as a responsible authority and seeking views on making health a licensing objective (Paragraphs 5.10 - 5.12).

Consultation Question 7: Are there any unintended consequences of designating health bodies as a responsible authority?

Yes

No

Maybe

Please specify in the box below

Leeds City Council supports the proposal of designating health bodies as a responsible authority providing that public health is included in the licensing objectives. Without this it would be difficult to envisage how the health body would be able to respond to applications, bring reviews etc.

Consultation Question 8: What are the implications in including the prevention of health harm as a licensing objective?

It would be difficult to see how a health authority would be able to make representations for new applications, however it would be very valuable for the local PCT to be able to bring premises for review if specific premises are linked to people being admitted into A&E departments with alcohol related problems and also have input into the Council's Statement of Licensing Policy.

Consultation Question 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?

As local residents, local business, bodies representing those people and now ward members can all make representations as interested parties, community groups already have the right to make a representation as a body representing people living in the vicinity of the premises.

Should the Government decide to remove the requirement that a person must live in the vicinity of the premises, then 13(3)(b) of the Act would be widened to include all community groups not just those representing local people in the vicinity.

Similarly 13(3)(c) is a non-specific group (a person involved in a business in that vicinity) and this could easily include school governors, social landlords, and housing associations.

Including a specific definition of community associations, housing associations, social landlords, and school governors as an interested party would provide clarity, but would not really widen the scope of that definition.

We do have experience of community groups making representation and when we enquire further find that the persons they are supposedly representing have no problems with the application.

Overhauling the appeals process for licence application determinations

The Government is considering options to tighten the appeals process and ensure that fewer appeals are heard in court and that, where possible, the power for determining licensing decisions remains with the licensing authority.

Proposal (Paragraphs 5.14 - 5.18)

- Amend the process of appeal to avoid the costly practice of rehearing licensing decisions.

Consultation Question 10: What would be the effect of making the default position for the magistrates' court to remit the appeal back to the licensing authority to hear?

Under the current legislation the remitting back of a decision with directions is an option. This Authority has experience of successfully suggesting that cases be remitted back to the licensing authority where new evidence is produced, or where there has been a change in circumstances which, if provided at the original hearing might have resulted in a different decision. This process saves court time and costs to all parties and promotes local decision making as all the original parties to the hearing are re-invited to make their representations. This can include local residents who would not be a party to the appeal and therefore can only address the court as witnesses for one or other party.

Amending the Act to make this the first option but allowing the Magistrates to substitute their own decision if necessary to do justice in the case, would be welcomed. This would promote the process outlined above and encourage the parties to an appeal to negotiate at an early stage.

However we would not be in favour of removing the rights of the Magistrates to substitute their decision entirely. At present there are few judicial review cases on licensing issues primarily because there is an absolute right to appeal on any grounds. This protects the applicant/licences holders article 6 and article 1 schedule 1 rights under the European Convention and the residents article 8 rights as the Magistrates' Court is clearly a fair and independent tribunal. If this safeguard is removed or curtailed, either by removing the ability to substitute their decision for that of the authority or by restricting the hearing to a review of the authority's decision, then there are potential human rights issues. This might lead to a greater number of judicial review cases which are considerably more expensive than Magistrates' appeal and in which local residents have no role.

Appeals by applicants on licence reviews

Decisions taken by the licensing authority at a review hearing do not take effect until any appeal is disposed of. There is evidence to suggest that some decisions are appealed against purely to ensure that the premises is able to trade during a profitable period (e.g. Christmas), and that the appeal may often be withdrawn once this period had passed.

Proposal (Paragraph 5.19)

- The sanctions imposed by a licensing authority should come into force when the holder of the premises licence receives the determination of the decision from the licensing authority, and the sanctions should remain unless and until an appeal to the magistrates' court is successful.

Consultation Question 11: What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination?

We would be in favour of this amendment as it is not in the interests of residents and/or responsible authorities when the premises are able to continue operating and having a negative effect on the local area despite recognised problems.

We do experience the problems as described, i.e. following reviews licence holders will appeal as a means to continue operating. These appeals can taken up to 18 months to conclude and brings bad publicity for the local authority as residents are unable to comprehend why they continue to trade.

This may also encourage licence holders to engage with Responsible Authorities and/or the licensing authority in order to deter a review.

However we would be concerned that such a change might lead to more High Court Judicial Review challenges where an application can be made to stay the effect of the decision as part of the process. This would be considerably more expensive for all parties.

We would suggest that it may be possible for the legislation to allow the Authority to determine whether or not the decision should take interim effect as part of the hearing. This would mirror the current position in expedited reviews and would be similar to the position on taxi licensing decisions.

That part of the decision could then be reviewable as an interim hearing in any Magistrates' appeal case. This would protect the aggrieved party (usually but not always the licence holder) who can have the opportunity to argue that point before the Courts.

Dealing with the problems of late night drinking

The Government wants to make sure that all local authorities have the power to address the pressures caused by extensive late night drinking, and the 24 hour licensing culture. The introduction of the Licensing Act has not given licensing authorities and local residents enough of a say in how late their pubs and clubs can stay open and the resulting crime and disorder has put pressure on police resources. More local flexibility is needed in determining closing times and setting the fees to reflect the costs of policing the late night economy.

Key proposals outlined in the consultation document to deliver this objective and the relevant consultation questions are listed below. These proposals are outlined in Chapter 6 of the consultation document. Relevant paragraphs in the consultation document are noted alongside the proposals below.

Early Morning Restriction Orders

Proposals (Paragraphs 6.03 and 6.04):

- The government intends to commence this power with a significant amendment to allow local councils to decide between which hours they would like to prevent premises from opening, according to what they believe to be most appropriate for their local area.
- The relevant legislation will also be amended so that an Early Morning Restriction Order could be created if it was felt to be “beneficial” for the promotion of the licensing objectives rather than if it is felt to be “necessary” as is currently the case.

Consultation Question 12: What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of the local areas?

The original proposal of restricting hours between 3am and 6am would have provided very little effect. In Leeds City Centre, between 2008 and 2009 69% of serious violent crime occurs between 23:00 and 04:00 and the peak time for serious violent offences is 01:00 to 02:00.

Therefore the only way for Leeds to have made meaningful use of an Early Morning Restriction Orders would be to increase the EMRO period from 00:00 to 5:00.

Alcohol Disorder Zones

Proposal (Paragraph 6.07):

- Repeal the unpopular power to establish Alcohol Disorder Zones and allow licensing authorities to use a simple adjustment to the existing fee system to pay for any additional policing needed during late-night opening.

Consultation Question 13: Do you have any concerns about repealing Alcohol Disorder Zones?

- Yes
- No
- Maybe

Please specify in the box below

To-date there has been no suggestion of an ADZ due to the complexities and costs involved

Cumulative Impact Policies

Proposal (Paragraph 6.09):

- Simplify Cumulative Impact Policies to allow licensing authorities to have more control over outlet density.

Consultation Question 14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies?

In our experience the requirement that all CIPs be based on evidence has assisted us to deflect requests for a CIP based on trivial matters. On a number of occasions we have been asked to pursue a CIP area just because it is a “good idea” or because a neighbouring town has one, when in fact it would not help in the problems in that area. It may be that these problems would be better addressed using a DPPO and the evidential requirements of a CIP have highlighted this.

We also feel that the evidential requirements have protected the council from the risk of a judicial review of the policy. We have met very little resistance to our CIPs so far. We believe this is because of the evidence we provided during the public consultation of the policy.

We do not believe that collating the evidence has been particularly difficult. Our evidence has included police crime statistics, public nuisance complaints and our own licensing records. Please see our [current consultation document](#) for details.

Late night levy

Proposals (Paragraphs 6.10-14):

- Legislate to enable licensing authorities to charge a late night levy to help pay for the additional cost of policing the local night-time economy which arises as a result of the sale of alcohol, where this is deemed necessary.
- The levy would be introduced as an additional charge for licensed premises that local authorities have the discretion to introduce. This would apply to premises that have a licence to open beyond a specified time (e.g. all premises that open after midnight on any day of the week).
- It may be possible to use the late night levy either as a means of recovering additional costs related to late night policing as a result of the sale of alcohol (in which case it would be determined by the additional cost of policing in the area it is applied, and the number of premises the cost is divided between). It may also be possible to allow the local authority some discretion over the amount that is charged for the levy or for them to use some of the proceeds to fund additional services such as taxi-marshalling or street cleaning.

Consultation Question 15a: Do you agree that the late night levy should be limited to recovery of these additional costs?

Yes

No

Maybe

Please outline your reasons in the box below

Any levy should be allocated to the provision of managing the night time economy, to meet locally set priorities. However it should be "ring fenced" to ensure that these funds are not used elsewhere.

Consultation Question 15b: Do you think that the local authority should be given some discretion on how much they can charge under the levy?

Yes

No

Maybe

Please outline your reasons in the box below

The cost of late night policing varies between authorities. Leeds City Council deals with completely different sets of issues to a smaller more rural authority. The ability to set the level of the late night levy would ensure it is related to the costs of local late night policing.

However, there is concern that should the late night levy be determined on a full cost recovery basis, the late night levy could be used to fund all policing after a certain time. This could make the cost of licensing a business in city centre beyond the reach of some businesses, when other licences such as PRS, Gaming Machine Duty etc are taken into consideration.

A centrally set late night levy rate would be easier to administer, but it would be helpful if licensing authorities are given the discretion to which premises the levy is applied to either by area, fee band or premises type.

There is a concern that setting a levy which is payable by all in an area would punish those premises that are operating well and do not add to the crime and disorder statistics, or require additional policing.

Consultation Question 16: Do you think it would be advantageous to offer reductions for the late night levy to premises which are involved in schemes to reduce the additional policing costs such as Best Bar None?

Yes

No

Maybe

Please outline your reasons in the box below

There is a scheme proposed in Leeds City Centre which encourages the use of door supervisors to provide voluntary audits of the city centre. These door supervisors are provided by the local late night premises. They patrol within a set perimeter and report issues to the police using the Night Net radio system. This allows policing in the city centre to be targeted to the areas in need.

It would be very advantageous to provide local businesses relief from the late night levy if they cooperate with this scheme.

However a reduction for premises in receipt of an accreditation, i.e. Best Bar None is questionable as experience has shown that not all accredited premises are trouble free.

Consultation Question 17: Do you agree that the additional costs of taxi-marshalling or street cleaning should be funded by the late night levy?

Yes

No

Maybe

Please outline your reasons in the box below

Yes, the levy should be flexible and allow licensing authorities the discretion to charge a levy that not just covers additional policing costs but the costs of managing the night time economy in other ways, e.g. night time marshalls, taxi marshalls, costs of additional cleaning, taxi enforcement. The list could be long and would relate to local priorities.

Amending the statutory guidance which accompanies the Licensing Act to make it clear that measures to limit opening hours can be considered

The Government intends to amend the guidance to make it clear to local areas that they can make decisions about the most appropriate licensing strategy for their area. Licensing authorities will be encouraged to consider using measures including fixed closing times, staggered closing times and zoning where they are appropriate for the promotion of the licensing objectives in their area.

Proposal (Paragraph 6.17)

- o Amend guidance to make it clear to local areas that they can make decisions about the most appropriate licensing strategy for their area.
- o Enable licensing authorities to have flexibility in restricting or extending opening hours to reflect community concerns or preferences.

Consultation Question 18: Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime?

Yes

No

Maybe

Please explain why in the box below

Yes. This would enable licensing authorities and the police to work together on a night time strategy that would reduce alcohol-related crime and to ease the pressure on policing.

However we are unclear as to how this would fit in with the Early Morning Restriction Orders, other than the EMRO would give licensing authorities the ability to make a retrospective decision and apply it to existing licenses.

Temporary Event Notices (TENs)

A temporary event notice (TEN) is a notification to the licensing authority that an individual intends to conduct licensable activities on a temporary basis for a period not exceeding 96 hours. There are several other statutory requirements which relate to a TEN, which restrict the number of persons allowed onto the premises, and the number of TENs that can be applied for in a year.

The TEN must be submitted to the licensing authority and the police at least ten working days in advance of the planned event. Only the police can object to a TEN, and only on crime prevention grounds. The police have 48 hours after the receipt of the TEN to object, and (unless the premises user agrees to modify the TEN) the licensing authority must hold a hearing to consider any objections that have been received. If the licensing authority decides that the objection is valid, it must issue a counter notice to the applicant at least 24 hours before the beginning of the event to prevent it going ahead.

The Government is concerned that some events held using TENs are not sufficiently regulated and give rise to alcohol-related crime and anti-social behaviour and wants to consider proposals to ensure that TENs are more effective. Key proposals outlined in the consultation document to deliver this objective and the relevant consultation questions are listed below. These proposals are outlined in chapter 7 of the consultation document. Relevant paragraphs in the consultation document are noted alongside the proposals.

Proposals (Paragraphs 7.04-7.07):

- Substantial overhaul of the system of TENs to give more time for objections to be raised, enable all responsible authorities to object, increase the notification period and reduce the number that can be applied for by personal licence holders and in the same vicinity.

Consultation Question 19: What would be the consequences of amending the legislation relating to TENs so that:

- a. All the responsible authorities can object to a TEN on all of the licensing objectives?**

Leeds City Council receives a large number of TENs each summer from licensed premises seeking to take entertainment outside, and to extend their hours. This would allow Environmental Health to make representation on public nuisance but the cost of a TEN would need to be reviewed to accommodate the cost of additional hearings.

We would not expect to receive communication from any of the other RAs.

- b. The police (and other responsible authorities) have five working days to object to a TEN?**

Providing the notice period is extended to take into account the extended period given to the RAs this wouldn't impact on the processing of TENs.

- c. The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?**

It is unclear what the purpose of extending the notice period for premises licence holders is for. This could be over complicating the process.

d. Licensing authorities have the discretion to apply existing licence conditions to a TEN?

Premises licence holders do use the TENs process to supersede their premises licence conditions.

The default position should be that the premises licence conditions stand unless the premises licence holder requests, and is permitted to disapply one or more of the conditions while the TEN is in force.

Some premises use TENs to bypass a single condition on their licence, for example a one off event for under 18s when they would not normally be able to admit children. Therefore it would be important to allow the licensees the option of waiving one or more conditions on the licence, perhaps by way of the Notice form.

Consultation Question 20: What would be the consequences of:

a) Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year?

This could have a huge impact on personal licence holders who have control of more than one premises, or who change premises. It would also impact on circuses who rely on the TEN system to be able to provide entertainment where a premises licence would not be suitable.

b) Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field)?

In order for this to be practical, the premises user would have to attach a location plan to their TEN.

Multiple TENs are used for events such as horticultural shows which will have a couple of beer tents and create no problem. If all responsible authorities are able to make comment to a TEN, then there would be no problem in the present system. If an applicant had an intention of holding a dance event under multiple TENs then the relevant responsible authorities would be in the position to object.

This would be a useful control providing the local authority applies the restriction, and it isn't a blanket restriction applied to all TENs. It could then be used when multiple TENs for the same event are being used to avoid applying for a premises licence.

Protecting children from the harm of alcohol

The quantity of alcohol consumed by children who drink alcohol has increased significantly in the past decade. Children's drinking is putting increasing pressure on the police and the health services. High levels of alcohol consumption are associated with a range of health harms and high risk behaviours including unprotected sex and offending.

Despite the growing problem of children's alcohol misuse and the increasing impact on public services, not enough has been done at the local level to limit the availability of alcohol to children. The current powers do not go far enough to prevent the selling of alcohol to children. Although pupils' access to alcohol is typically by being given it by friends or parents, about half of pupils who have ever drunk also say that they do buy alcohol, despite being well below the age when they can legally do so.

Key proposals outlined in the consultation document to deliver this objective and the relevant consultation questions are listed below. These proposals are outlined in chapter 8 of the consultation document. Relevant paragraphs in the consultation document are noted alongside the proposals below.

Proposals (Paragraphs 8.05-06):

- Introduce tougher sentences for persistent underage sales.
- Extend the period of voluntary closure that can be given by the police as an alternative to prosecution

Consultation Question 21: Do you think 168 hours (7 days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

Yes

No

Maybe

Please give your reasons in the box below

Although a seven day closure would be a better deterrent than a two day closure, it is unclear as to who would agree to voluntarily close for seven days rather than risk a £20,000 fine. This would only be of benefit to sole traders/franchises who are trying to avoid a criminal prosecution and for those persons a 48 closure is a substantial penalty.

Consultation Question 22: What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

It is difficult to imagine who would volunteer to close under these increased conditions?

Proposal (Paragraph 8.07):

- Amend the legislation to ensure that all premises found to be persistently selling alcohol to children will have their licence reviewed, regardless of whether they have opted for voluntary closure or prosecution.

Consultation Question 23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?

People who are found to be persistently selling to children are currently penalised with either a fixed penalty notice/formal caution/prosecution with the option of a voluntary closure.

By requiring the licensing authority to automatically review the licence as well as these penalties would not be an effective deterrent as licensing authorities who hear that a premises licence holder has already received these penalties may not then penalise the person further.

However it may be much more effective to make the review automatic after a repeated offence following prosecution/voluntary closure and for that review to seek revocation of the licence. This then provides a proportional response. There should be strong direction through the Section 182 guidance that advised that revocation should be the first sanction.

In any case there are a number of issues here that relate to the difference between a person (member of staff) persistently selling alcohol to children and a sanction on the premises licence holder.

This seems quite straightforward in the case of a small off licence, which is owned by the premises licence holder. In this case the premises licence holder has complete control, including staff training and the hiring and dismissal of staff. In this case penalising both the member of staff who made the sale, plus the premises licence holder for allowing the sale is appropriate.

In the case of a pub company, case law (Hall & Woodhouse Ltd and the Borough and County of the Town of Poole, April 2009) tells us that the premises licence holder may not have knowingly allowed the offence and cannot be penalised for an offence committed by a person employed by their tenant. In this case a review of the licence has no effect.

Banning below-cost sales

There has been a growing concern over the last few years about how cheaply some alcoholic drinks are being sold. We are also aware of the public's unease and their perception of heavily discounted alcohol being a key contributory factor to unacceptable levels of alcohol-related crime and disorder - in many cases as a result of "pre-loading" in preparation for a night out.

We are committed to ensuring that local people are able to enjoy all parts of their community without feeling intimidated by those who have drunk too much alcohol and to reducing the burden on frontline services of dealing with drunken behaviour.

Key proposals outlined in the coalition document to deliver this objective and the relevant consultation questions are listed below. These proposals are outlined in chapter 9 of the consultation document. Relevant paragraphs in the consultation document are noted alongside the proposals below.

Proposal (Paragraph 9.03)

- Ban the sale of alcohol below cost price.

Legislative options for banning below-cost sales

The definition of 'cost' has implications for the policy, powers required, enforcement and different incentives. The 'cost' of an alcoholic product differs between retail businesses as they negotiate their own prices with suppliers, have different internal cost structures and may base overall profitability on a basket of goods.

There are a number of ways in which such a ban might work, and Government must find an approach which is compatible with EU trade and competition laws and realistic to enforce. Most EU countries which have tried similar policies have banned selling below 'net invoice price' where the reference price is broadly the unit price on the invoice.

Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following. Please give your views in the box below each point.

a. Simple and effective ways to define the 'cost' of alcohol

This would be outside of the experience of the licensing authority.

b. Effective ways to enforce a ban on below cost selling and their costs

We have concerns regarding the enforceability of such a ban and who would enforce it. Where would the burden of proof lie? Would the enforcing authority be reliant on the information provided by the premises licence holder?

Would operators be compelled to provide the paperwork required to determine if alcohol is being sold below cost price, and would licensing authorities be expected to undertake forensic accountancy to prove an offence had been committed?

How would this work if the supply chain is manipulated so that the cost price of alcohol drops to a very low level?

Perhaps it would be more effective to establish a set price per unit/minimum price that is definable.

- c. **The feasibility of using the Mandatory Code of Practice (Mandatory Licensing Conditions) Order 2010 to set a licence condition that no sale can be below cost, without defining cost.**

Please see above.

The impact of using the mandatory conditions would mean that the enforcement of minimum pricing would fall to licensing authorities, and would come under a S136 offence.

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Reducing burden and bureaucracy of licensing and covering its cost

Licence fees have not been increased since their introduction and therefore some sort of increase is long overdue. This would be hugely welcomed by licensing authorities who have long argued that their enforcement costs exceed their fee income.

The Government also acknowledges that adopting a tougher licensing regime as outlined in these proposals may lead to an increase in the number of licence reviews conducted, and a subsequent risk of increased burden on local licensing authorities. Any additional burdens on licensing authorities should also be reflected in the level of licence fees.

Key proposals outlined in the consultation document to deliver this objective and the relevant consultation questions are listed below. These proposals are outlined in chapter 10 of the consultation document. Relevant paragraphs in the consultation document are noted alongside the proposals below.

Increases in licensing fees

Proposal (Paragraph 10.01)

- o Enable licensing authorities to increase licence fees so that they are based on full cost recovery.

Consultation Question 25: Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?

Yes, very much so. Although it would increase the cost of licensing, the fees would be brought in line with those charged for gambling premises and sex establishments.

If the fees were based on full cost recovery the licensing authority would not need to be supplemented from central funds. Essentially the licensing authority would be funded solely by the trade and the service equipped to meet its responsibilities under the Act

Automatic revocation of licence for non-payment of fees.

Proposal (Paragraph 10.03)

- o Enable licensing authorities to revoke licences due to non-payment of fees.

Consultation Question 26: Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?

Yes

No

Maybe

Please explain why in the box below

Yes, very much so. The cost of recovering fees as a civil debt is prohibitive and means that Leeds City Council has lost thousands of pounds in unpaid annual fees. However, in the case where a business changes hands but the premises licence is not transferred (as happens regularly with take away premises), it would assist local authorities if there is some way of recovering the costs of the unpaid annual fee from the current owners.

Deregulation

In April 2010, the previous administration enacted a Mandatory Code of Practice (Mandatory Licensing Conditions) Order 2010 for Alcohol Retailers, which was intended to be introduced in two stages. The first stage, which took place in April 2010, imposed conditions on licensed premises to:

- (a) Ban irresponsible promotions in the on-trade
- (b) Ban dispensing alcohol directly into the mouths of customers
- (c) Ensure that free tap water was available in all licensed premises in the on-trade (Paragraph 10.04)

Consultation Question 27: Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol-related crime?

Yes

No

Maybe

Please explain why in the box below

We have no evidence to believe that these conditions have made any great impact but we recognise that it is still early days.

During the consultation process for the introduction of new mandatory conditions Leeds City Council provided a response which raised a number of concerns.

In relation to drinks promotions, we have noticed a reduction in the more concerning drinks promotions being offered as our Enforcement Officers have been proactive in advertising the new mandatory conditions through liaison and PubWatch meetings. We are sure that the larger companies will find ways of promoting drinks in a way that gets round the definition in the mandatory conditions.

The mandatory condition relating to providing drinking water for customers has, unbelievably, caused the most confusion. This has been in relation to the definition of customer.

It would have been useful to have access to clear and unambiguous guidance which we can provide to premises licence holders.

The legislation for the Mandatory Code contained two further conditions for licensed premises. These will be introduced on 1 October 2010. These conditions were delayed to give business more time to prepare and will mandate all licensed premises to:

- (a) Ensure they have an age verification policy in place
- (b) Ensure they are able to offer smaller servings of beer, wine and spirits (Paragraph 10.05).

As the regulations have been enacted, it is not possible to prevent d) and e) coming into force in October. However, the Government believes strongly that regulation should only be used as a last resort, and that alternatives to regulation should be used wherever possible. We want to take the opportunity of this consultation to give people the chance to comment on the necessity, cost, and impact of the provisions outlined in the mandatory code (Paragraph 10.06).

Consultation Question 28: Would you support the repeal of any or all of the mandatory conditions?

Yes

No

Maybe

Please explain why in the box below

The majority of responsible retailers already operate an age verification policy and it is difficult to see what difference these two conditions will make to preventing alcohol related crime. However it will be relatively easy to ensure compliance providing the Home Office provide clear, unambiguous guidance.

The condition relating to the smaller measures being offered could be supported by the point of sale information on units that was proposed as a mandatory condition in the Safe Sensible Social consultation.

The Government is also interested in further de-regulating the Licensing Act in order to reduce the administrative burden both on business and licensing authorities. For example the application forms for both a premises licence and a TEN could be reduced, and the requirement on the licensing authority to determine and publish a statement of licensing policy (Paragraph 10.07).

Consultation Question 29: Would you support measures to de-regulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?

Yes

No

Maybe

Please explain why in the box below

The application form for a grant and a variation of a premises licence are far too long. Experience has taught us that applicants do not want different times for alcohol, and all the different types of regulated entertainment. The form could be simplified by removing all the boxes for licensable activities. All these boxes could be replaced with four boxes; sale by retail of alcohol, regulated entertainment, late night refreshment, opening hours. This would remove 4 pages from an excessive long application form.

The application form for a club premises certificate should be changed in the same way

Having to specify the times that the premises are open to the public should be reviewed and preferably removed. If there are to be 'drinking up' or wind-down times then this will be relative, but otherwise we have occasions when the premises are used for other purposes, i.e. retail, and by fact that the premises have a licence, albeit not in use, we are still bound to consider the impact on the locality. It is considered that this element should be removed as any matters arising from non-licensable use will be addressed by other legislation.

The stipulation that the policy is reviewed on a three yearly basis is rigid and inflexible. It provides logistic difficulties when the public consultation reveals issues that the council then may need to reconsult upon. The Licensing Act gave flexibility to businesses and moved away from rigid and inflexible regulatory regime. By allowing the Licensing Authorities the flexibility to review their policies as and when required rather than rigidly every three years will save Leeds City Council in the region of £8,000 for each consultation.

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